No. 338

FILED
NOV 14
HAROLD R. WILL

In the Supreme Court of the United States.

OCTOBER TERM, 1955

HOLMBY PRODUCTIONS, INC., and UNITED ARTISTS CORPORATION, *Appellants,*

vs.

MRS. FRANCES VAUGHN, MRS. J. R. STOWERS and MRS. BERTHA HALL, Constituting the Kansas State Board of Review, HAROLD R. FATZER, Attorney General of the State of Kansas, and DONALD E. MARTIN, County Attorney of Wyandotte County, Kansas, *Appellees.*

On Appeal from the Supreme Court of the State of Kansas

Petition of Harold R. Fatzer, Attorney General of the State of Kansas, For Rehearing

HAROLD R. FATZER,
Attorney General,
PAUL E. WILSON,
Assistant Attorney General,
Attorneys for Petitioner.

28-1649

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PETITION FOR REHEARING

TO THE SUPREME COURT OF THE UNITED STATES AND THE JUSTICES THEREOF:

Comes now Harold R. Fatzer, Attorney General of the State of Kansas, and one of the appellees herein, and presents this his petition for rehearing of the above entitled cause and in support thereof respectfully states to the Court:

I

On October 24, 1955, the Court entered the following order in the above entitled case:

> "*PER CURIAM:* Judgment reversed. *Joseph Burstyn, Inc., v. Wilson,* 343 U. S. 495; *Superior Films v. Dept. of Education,* 346 U. S. 587."

Said order was entered without oral argument, without briefs on the merits, and without notice to counsel that said cause was pending for final determination.

II

The judgment reversed as aforesaid was entered by the Supreme Court of the State of Kansas on April 9, 1955, in the case of *Holmby Productions, Inc., et al., v. Vaughn, et al.,* 177 Kan. 728, 282 P. 2d 412, wherein said Supreme Court of Kansas had upheld the constitutionality of sections 51-101 to 51-112 and 74-2201 to 74-2209 of the General Statutes of Kansas of 1949. The statutes there under attack were originally enacted by the Legislature of the State of Kansas in 1913 (Chapter 294, Laws of 1913), and have remained in full force and effect since that time, except as amended by subsequent legislatures. (Chapter 308, Laws of 1917; Chapter 75, Laws of 1921; Chapter 14, Laws of 1923; Chapter 196, Laws of 1925; Chapter 224, Laws of 1931; Chapters 213 and 278, Laws of 1933; Chapter 206, Laws of 1935; Chapter 277, Laws of 1941; and

Chapter 410, Laws of 1949.) The constitutional validity of the said statutes has been affirmed by the Supreme Court of the State of Kansas (*State, ex rel., v. Ross,* 101 Kan. 377, 166 P. 505, and *Photo-Play Corporation v. Board of Review,* 102 Kan. 356, 169 P. 1154), and by this Court (*Mutual Film Corporation of Missouri v. Hodges, et al.,* 236 U. S. 248, 59 L. Ed. 561).

III

The issues in said cause were so drawn by the parties as to present to this Court for determination the following questions:

1. Whether the Kansas Motion Picture Censorship Law subjecting motion pictures to a licensing system which requires advance submission to administrative officials for their judgment as to the content is invalid on its face as repugnant to the guarantee of freedom of expression contained in the First Amendment and made applicable to the States by the Fourteenth Amendment to the Constitution of the United States.

2. Whether the statutory standards for censorship contained in the Kansas Motion Picture Censorship Law as applied by the Kansas State Board of Review with respect to the motion picture entitled "The Moon is Blue" are by that application given a construction so broad, vague and indefinite as to render such standards, and each of them,

invalid as repugnant to the guarantee of freedom of expression contained in the First Amendment and to the due process clause contained in the Fourteenth Amendment to the Constitution of the United States.

3. Whether under the Kansas Motion Picture Censorship Law as construed by the Supreme Court of Kansas the available judicial review of the action by the Kansas State Board of Review in disapproving films is sufficient to comply with the due process and freedom of expression guarantees contained in the Constitution of the United States.

IV

This petitioner has carefully considered the Court's judgment of October 24, 1955, together with the opinions cited therein. In candor, petitioner is compelled to state that he finds therein no assistance in answering the questions presented by this appeal. The appellants herein have attacked the statutory standard "obscene." Neither of the cases cited appear to be concerned with that standard. *Burstyn v. Wilson,* supra, concludes with the following statement:

> "Since the term 'sacrilegious' is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one

> now before us. We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that is 'sacrilegious'."

In the *Superior Films* case the Ohio Agency had banned a film "on account of being harmful." A companion case presented an attack on the standards "immoral" and "would tend to corrupt morals." (*Commercial Pictures Corp. v. New York*, 346 U. S. 587, 98 L. Ed. 329.) The Court there entered a *per curiam* opinion which furnishes no guide in the instant case.

V

This petitioner, as Attorney General, is the chief law officer of the State of Kansas. He is charged with the responsibility of advising other state officials on questions of law and enforcement of the laws of the state. He has assumed and must assume the validity and effect of the Kansas Motion Picture Censorship Law until such time as that law is declared invalid by a court of competent jurisdiction. The present decision raises doubt as to the validity of the statute without pointing out wherein it is defective. Petitioner does not know and cannot ascertain whether this court has determined that (1) censorship is *per se* unconstitutional, or (2) the particular standard here applied is so indefinite and uncertain as to deny due process, or (3)

the judicial review afforded by the statute, as construed by the Supreme Court of Kansas, is insufficient. Petitioner respectfully submits that the questions here presented are of sufficient importance, not only to this petitioner and the officials responsible for the administration of the Kansas Motion Picture Censorship Law, but to the people of the State of Kansas as to require full examination on their merits and definitive answers by this Court.

VI

Petitioner states that the judgment here reversed is a decision of the highest court of the State of Kansas; that it construes a statute which has been in full force and effect for more than forty-two years and appears to be supported by decisions both of the highest court of the State of Kansas and of the Supreme Court of the United States. Petitioner respectfully submits that before any judgment is entered reversing that decision, this Court should cause the matter to be docketed for full hearing, and that the parties should be given the opportunity to present briefs and argument on the merits of the questions involved. Petitioner further submits that any judgment reversing the decision of the Supreme Court of Kansas as aforesaid should be accompanied by a statement demonstrating wherein the decision of said Supreme Court of Kansas is erroneous.

WHEREFORE, It is respectfully urged that this petition for rehearing be granted, and that the parties be afforded an opportunity to file briefs on the merits and present oral argument herein, and that the decision of the Court state whether censorship of motion pictures in *per se* is offensive to the constitution, whether the standards contained in Kansas statutes and applied in the instant case are so indefinite as to deny due process, and whether the procedure for judicial review as contained in the Kansas statute and interpreted by the Supreme Court of Kansas be violative of constitutional rights.

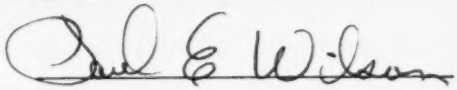
Respectfully submitted,

HAROLD R. FATZER,
Attorney General,
PAUL E. WILSON,
Assistant Attorney General,
Topeka, Kansas,
Attorneys for Petitioner.

By

CERTIFICATE OF COUNSEL

I, Counsel for the above named petitioner, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.



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